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09/874,446	06/04/2001	Brad Baker	30687-11	5829

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EXAMINER
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MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/874,446

Applicant(s)

BAKER, BRAD

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 75-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75-102 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12</u> . | 6) <input type="checkbox"/> Other:  |

### DETAILED ACTION

1. The Amendment filed July 9, 2003 has been entered. However, Drawing correction was not received. Claims 1-74 have been cancelled. Claims 75-102 have been added and remain pending in the application.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 75-102 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

a. Claim 75: " an individual figurine"

The term figurine is not defined in the specification as it pertains to the handle/body portion combination disclosed. For examination purposes, an individual figurine is taken to mean the combination of body and handle comprises an entire human, alien, humanoid, mammal, insect, or creature form.

b. Claim 76: " a stand alone figurine"

The term stand-alone figurine is not defined in the specification. It is not disclosed how one determines when the handle and body portions, in

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combination, need support for placement. Additionally, applicant has not disclosed what is meant by "placement" (i.e. placement on a table, placement in one's mouth, placement on the container, etc.) For examination purposes a stand alone figurine is taken to mean a handle portion and a body portion comprising, in combination, a figurine does not require an supplemental means for attaching the figurine to the an opening of a container (i.e. a collar).

c. Claim 95: "creature"

This term is not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. For examination purpose, the examiner will assume the definition provided by Merriam-Webster Online, is something created either animate or inanimate, a lower animal, including a farm animal, and a human being.

4. Claims 75,76 and 100 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Regarding claim 75, applicant has not disclosed a figurine, but has disclosed human, alien, humanoid, mammal, insect, and creature forms.

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6. Regarding claim 76, applicant has not described the combination of a handle and body portion comprising a stand-alone figurine.

7. Regarding claim 100, the specification states "body" is intended to include a lower portion complimentary to the handle/head, and examples include the arms/torso/legs that correlate to head as shown in the Figures. The originally presented claims recite the body portion comprises at least one body part from a group consisting of a torso, leg, and an arm. The specification discloses that the body portion is a conventional humanoid body portion (i.e. two arms, two legs, torso, etc), and the claim includes bodies that could possible have only a torso, leg or arm ( Presumably, this is directed to a "creature" or alien). The original disclosure does not include a body comprising at least a foot (as recited in claim 100), which would include body portions having only a foot.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 75-102 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Regarding claim 75, the term "individual figurine" is in indefinite because figurine may include shapes outside of those disclosed. For examination purposes, an individual figurine is taken to mean the combination of body and handle comprises a human, alien, humanoid, mammal, insect, or creature form.

11. Regarding claim 76, the term "stand alone figurine" is indefinite because applicant has defined it as not needing support for placement, and "support for placement", since it is not in the specification, may include support for placement on a table so that a figurine may remain in an upright position on a flat surface.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 75,76,78,79,83-88,93-95,97, and 99 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Conconi (WO 9918011).

15. Regarding claim 75, Conconi teaches a container (item 1 in Figure 1) with a flowable confectionery. It is noted that Conconi teaches how to consume a confectionery that melts and flows down the consumer's hand, and as such the confectionery is indeed flowable. ). A non-edible handle is disposed directly above the container and a body is disposed below the handle removably positioned within the container (See Page 4, line 8 to Page 5, line 18, Page 6 lines 14-20, in light of Figures 1 and 2). The handle and body in combination comprise an individual figurine (e.g. item 11) since the recitation of "said handle portion and said body portion comprising, in combination, an individual figurine" *does not* restrict the handle portion or body portion

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to form any particular shape. Instead this recitation only requires that the combination *comprises* a figurine, which is taught by Conconi.

16. Regarding claim 76, the handle and body portion, in combination, comprising a stand alone figurine do not require additional support since the body portion comprises a means for support for placement (see Figures 3-6 in light of Page 4, line 8 to Page 5, line 18).

17. Regarding claims 78, 79, 83, and 84, Conconi teaches ice lollies and ice creams, which would include sugar based or artificially sweetener based confectioneries as recited in claim 78, comprise sugar or color or flavoring agents, as recited in claim 79, comprise a fluid (i.e. since they melt) as recited in claim 83, with respect to ice cream have viscoelastic rheological properties as recited in claim 84 (Abstract).

18. Regarding claims 85-87, Conconi teaches a cap for the container (e.g. item 5) disposed on a middle portion of the figurine (item 11). That is, the cap is disposed on the middle of the lower end of the figurine (See figures 3-6) as recited in claim 85, includes a collar 5b as recited in claim 86, which matingly engages with the container as recited in claim 87 (Page 5, line 20 to Page 6, line 9),

19. Regarding claim 88, the collar, which is attached to the body portion, engages the container and the handle portion is engaged to the collar/body portion (See Figures 3-6). Thus, since Conconi teaches the required structure, Conconi inherently teaches the intended purpose of engaging the collar to the container for attachment of the handle to the container.

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20. Regarding claims 93-95 97,99, Conconi teaches a plastic handle portion as recited in claim 93, which comprises a head portion as recited in claim 94, a creature (i.e. ducks are a farm animals) as recited in claim 95, and the body portion in non-edible, as recited in claim 97, carried by the handle portion as recited in claim 99(See Page 4, line 8 to Page 5, line 18, Figures).

21. Claims 75,77-84,92,93,97-102 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baker (WO 0019803).

22. Regarding claim 75, Baker teaches a container (Page 6, lines 15-19) with a flowable confectionery held therein (Page 15, lines 5-11). Baker also teaches a non-edible handle that is disposed directly above the container, during consumption, with a body portion disposed below the handle and removably positioned within the container (Page 5, lines 5-10, Page 8, line 25 to Page 9, line 2, Page 15, lines 28-30, and the various embodiments described for Figures 15-17,19-21 from Page 11, line 23 to Page 14, line 7). The handle and body in combination comprise an individual figurine (e.g. see figures 15-17,19-21) since the recitation of "said handle portion and said body portion comprising, in combination, an individual figurine" *does not* restrict the handle portion or body portion to form any particular shape. Instead this recitation only requires that the combination *comprises* a figurine, which is taught by Baker.

23. Regarding claim 77, in the snake embodiment (i.e. a lower embodiment of figure 20) there is a cylindrical basket (i.e. container) .



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24. Regarding claims 78-84 the flowable confectioneries includes: sugar and artificial sweeteners, as recited in claims 78 and 79, flow agents such as magnesium stearate as recited in claim 80, luminiferous material as recited in claim 81, may include gas generating or releasing material as recited in claim 82, and may include a fluid with viscoelastic properties as recited in claims 83 and 84 ( See page 5, lines 19-30, Page 6, lines 1-3,24-30, and the various embodiments described for Figures 15-17,19-21 from Page 11, line 23 to Page 14, line 7).

25. Regarding claims 92,93,97-102, the handles may be made of rigid or semi-rigid material such as plastic or wood, as recited in claims 92 and 93, the body, or coatable, portion (e.g. mummy , vampire, snake etc.) may be edible and or non-edible as recited in claims 97 and 98, is carried by the handle as recited in claim 99, includes at least one body part such as a torso as recited in claim 100 where in the body portion is coatable and can extract the confectionery as recited in claim 101, and the body portion comprises sugar or corn syrup (Page 5, lines 5-17 and Page 17, lines 26-27 in light of the various embodiments described for Figures 15-17,19-21 from Page 11, line 23 to Page 14, line 7).

***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

27. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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28. Claim 96 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conconi (WO 9918011) as applied to claims 75,76,78,79,83-88,93-95,97, and 99 above, further in view of Bobis (US 5354191).

29. Conconi is silent in teaching the handle portion has a flowable confection disposed therein. Like Conconi, Bobis also teaches a frozen and meltable (i.e. flowable) food items on a handle and body portion with a cap for attaching onto the container. Also like Conconi, Bobis teaches handling the melted/flowable portions of the confection so that they do not contact the consumer's hand. To accomplish this, Bobis teaches providing an opening in the handle so that the handle can contain the melted, flowable confection, which the consumer can suck out and consume out of the handle (Column 4, lines 47-59, column 5, line 20 to column 6, line 54, column 7, line 20 to column 8, line 31, Figures 8 and 9 ). Therefore, it would have been obvious to modify Conconi to include a hole in the handle since Bobis solves the same problem as Conconi: handling the melted portion of frozen liquids, and teaches providing a hole in the handle so that the melted/ flowable confection can be removed and consumed. One would have been substituting one handle/body/cap/collar design for another for the same purpose: handling the melted portion of a frozen liquid in a container.

30. Claims 89-91 rejected under 35 U.S.C. 103(a) as being unpatentable over Conconi (WO 9918011) as applied to claims 75,76,78,79,83-88,93-95,97, and 99 above.

31. Regarding claims 89-91, Conconi teaches the cap engages the container to form a seal, but is silent in teaching a tab/slot /ridge arrangement for engaging the cap. However, once it was known to sealingly and releaseably engage the container/cap configuration of Conconi to select any conventional sealing arrangement for a cap and container (such as twisting with a ridge/tab/slot engagement) would have been an obvious matter of design since Conconi teaches the container must be sealed at the cap/container connection and using a screw/twist engagement with a ridge/tab/slot configuration is well known for sealing caps to containers.

### ***Response to Arguments***

32. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Diresta (US 6485348 B2, Diresta D423183), and Kiro (US 5634885) teach simulated edible head portion and non-edible body portion. Collier (US 3085883) teach the handle/body portions comprising figurines. Humphrey teaches dipping an edible foot attached to a handle for dipping into a flowable, gas releasing confection.

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

35. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

37. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

38. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.



**MILTON I. CANO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**

Robert Madsen   
Examiner  
Art Unit 1761